

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MARTIN DWAYNE ISAIA MITCHELL,)	
)	
Movant,)	
v.)	No. 4:24-cv-00100-SEP
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

This matter is before the Court on its own motion. On November 7, 2023, Movant mailed a pro se motion to the Court requesting permission to file a notice of appeal out of time in his closed criminal case, *United States v. Mitchell*, Case No. 4:21-cr-00252-SEP. In the motion, Movant indicated that he wanted to appeal his conviction, but his attorney did not timely file a notice of appeal. *Id.* The Court construed the filing as a motion for relief from judgment, administratively terminated the motion, and opened this civil action under 28 U.S.C. § 2255. *See* Doc. [1].

When a court *sua sponte* characterizes a filing as a § 2255 motion, the movant must be given the opportunity to either consent to the classification or withdraw the filing. *See Morales v. United States*, 304 F.3d 764, 767 (8th Cir. 2002).

Movant is warned that if he consents to the classification of his filing as a motion under § 2255, the motion and any future § 2255 motions will be subject to the restrictions on filing second or successive motions. That is, Movant will not be permitted to bring a second or successive § 2255 motion unless the United States Court of Appeals for the Eighth Circuit certifies that the second or successive motion meets the requirements set forth in § 2255(h)(1)-(2). Movant is also warned that § 2255 motions are subject to a one-year limitations period. *See* 28 U.S.C. § 2255(f).

If Movant consents to the characterization of his filing as a § 2255 motion, he must inform the Court of his decision, in writing, and file an amended § 2255 motion on the Court-provided form within 30 days of the date of this Order. *See* E.D. Mo. L.R. 2.06(A). If Movant opposes the characterization or fails to respond to this Order, the Court will dismiss the action without prejudice.

Accordingly,

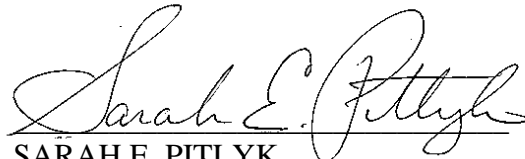
IT IS HEREBY ORDERED that Movant shall have thirty (30) days from the date of this Order to formally consent, in writing, to the Court's characterization of his filing as § 2255 motion.

IT IS FURTHER ORDERED that if Movant consents to the characterization, then he must file an amended § 2255 motion on the Court-provided form within thirty (30) days of the date of this Order.

IT IS FURTHER ORDERED that if Movant does not consent to the characterization of the filing as a § 2255 motion, or if Movant fails to timely respond to this Order, then the Court will dismiss the action without prejudice.

IT IS FINALLY ORDERED that the Clerk shall mail to Movant a copy of the Court's form motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255.

Dated this 1st day of February, 2024.


SARAH E. PITLYK
UNITED STATES DISTRICT JUDGE